



June 14, 2007

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Honorable Deborah Bowen
Secretary of State
State of California
1500 11th Street, 6th Floor
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Dear Secretary Bowen:

The California State Association of Counties (CSAC) continues to remain deeply concerned that the timing and manner in which the “top to bottom review” of voting systems that your office has undertaken will create significant uncertainty in the ability of counties to conduct upcoming elections.

Our member counties concur with the need to ensure that voting systems are secure, accurate and reliable. The Office of the Secretary of State previously certified all of the systems that are being tested. We recognize that you have concerns about these systems that differ from your predecessor, and we respect your efforts to assure voters of the integrity of these systems. However, the timing and the unclear standards and procedures of this review will make it very difficult to conduct upcoming elections.

First, counties using equipment that is subject to this review have not been advised of any final standards or procedure for the review. We appreciate that your office convened a conference call with local election officials, but this gave them little opportunity to comment on standards and procedures of the review, and no final standards or procedures have yet been published.

Second, your office has not responded to election officials’ requests to be included in the review process. If your reviewers will be providing recommendations for changing the use or security procedures for these systems, it is critical that the review committees include experts with extensive experience in the actual conduct of elections in California. No one has more experience in that field than the County elections officials themselves. None of the individuals identified in your list of reviewers appears to have that sort of experience.

Third, the County elections officials are also justifiably concerned with your office’s reliance upon consultants who are outspoken opponents of electronic voting in general or of specific vendors, or have been proponents of election systems other than the ones they will be reviewing. The fear is that their inclusion could lead to preordained or biased results. For example, attached for your reference is a thirty-nine page report prepared and signed by Noel Runyan, the individual you have designated to head the “accessibility” review team. Mr. Runyan’s report was filed with the Colorado court on behalf of the plaintiffs in the *Conroy et al. v. Dennis* case. In the report Mr. Runyan unequivocally states that the Sequoia Edge II, ES&Si Votronic and Diebold TSx “are not accessible for individuals with disabilities,” “are not voting systems that meet HAVA” and “would require significant redesign to comply with federal ... legal requirements.” Lowell Finley, your Deputy Secretary of State for Voting Systems Technology and Policy, and his then co-counsel, also filed a declaration by Mr. Runyan in the California case of *Holder v.*

McPherson. That declaration offered even more highly critical opinions relating to the Diebold AV-TSx system. Given that Mr. Runyan's opinions are already on record it would appear that he has formed a strong opinion, and that there likely may be a lack of objectivity in order to avoid contradicting his prior opinions. Such strongly held views would make it highly unlikely that the review team would reach a different opinion.

Fourth, our organization is also acutely aware that no regulations have been published about the review and use of the voting machines, voting devices and vote tabulating devices, as required by Elections Code sections 19100 and 19205. Such regulations are required to be approved pursuant to the Administrative Procedures Act of California (Government Code section 11340 *et seq.*). Last year Mr. Finley and his co-counsel in *Holder v. MacPherson* argued that the Secretary of State was required to comply with the requirements of the APA before imposing conditions on the continued use of election systems. His arguments on this issue are attached for your information. Specifically, counsel argued that the certification procedures were "regulations" that required their formal issuance, preceded by a formal opportunity for comment by interested parties. (See particularly Government Code sections 11346.2 and 11346.8). We are concerned that the failure to consider the same legal arguments in the context of this review may threaten the validity of the decisions ultimately made following this review. An unreliable or invalid result does not serve the interests of the voters or those who must conduct the elections.

Finally, it is now five months before the next major election cycle in November and eight months before the 2008 Presidential Primary Election. Our organization is concerned that given the shortness of time, your review may rush to judgment and may impose new and varied conditions. Moreover, the issuance of such conditions may be so late as to create significant challenges and serious risks associated with the conduct of upcoming elections. If the review imposes impractical and/or onerous conditions that threaten the smooth and efficient running of that election, it could undermine the credibility of the very important vote and delay the results of the election.

Over the past several years, counties have worked diligently to comply with the shifting directives of the Secretaries of State pertaining to the use of certified voting systems. We fully support your ongoing efforts to ensure the integrity of elections systems. However, we are greatly concerned that the present review is being conducted in a manner that presents serious risks due to the uncertainties created by this current process. This uncertainty has the very high likelihood to impair County election officials' ability to perform their duties.

Sincerely,

A handwritten signature in cursive script that reads "Frank Bigelow". The signature is written in black ink and is positioned above the printed name.

Frank Bigelow
CSAC President